

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

NORTH AMERICAN BUTTERFLY)	
ASSOCIATION dba NATIONAL)	
BUTTERFLY CENTER, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 7:19-CV-411
)	
NEUHAUS & SONS, LLC, <i>et al.</i> ,)	
)	
Defendants.)	

MOTION TO WITHDRAW APPEARANCE

COMES NOW, Attorneys Thomas G. Haskins Jr. of the law firm Barnes & Thornburg LLP (“Barnes & Thornburg”), David G. Oliveira and Victor Vincent Vicinaiz of the law firm Roerig Oliveira and Fisher LLP (“ROFLLP”) (together, “Counsel”) and respectfully move for leave to withdraw their appearance on behalf of We Build The Wall, Inc. pursuant to United States District Court, Southern District of Texas, Local Rule 83.2 and Texas Disciplinary Rules of Professional Conduct 1.15(b), and in support hereof states as follows:

1. On December 17, 2019, the undersigned Counsel appeared as counsel in this case for Defendant We Build the Wall, Inc. (“WBTW”).
2. Barnes & Thornburg LLP and ROFLLP presented invoices to WBTW for the firm’s legal work on a monthly basis pursuant to the terms of engagement agreed to by WBTW. WBTW made regular payments on those invoices through the July 2020 invoice.
3. As of the date of this Motion, WBTW has failed to pay Barnes & Thornburg LLP’s or ROFLLP’s invoices for legal work since August 2020.

4. On December 4, 2020, through their respective counsel, Barnes & Thornburg began discussions with Kris Kobach, WBTW's General Counsel, about unpaid fees and Barnes & Thornburg LLP's intent to withdraw in light of unpaid invoices. At that time, WBTW indicated it did not consent to Barnes & Thornburg's withdrawal in this matter. No payments by WBTW were made since those discussions in early December.

5. On February 11, 2021, Barnes & Thornburg, through counsel, again notified counsel for Mr. Kobach of its intent to withdraw from representing WBTW in this matter in light of the unpaid invoices and asked for WBTW's consent.

6. On February 18, 2021, Mr. Kobach's counsel notified Barnes & Thornburg's counsel that WBTW did not consent to Barnes & Thornburg's withdrawal in this matter.

7. On February 19, 2021, counsel for Mr. Kobach was also notified of ROFLLP's intent to withdraw from representing WBTW in this matter in light of the unpaid invoices.

8. A lawyer may withdraw from a representation if "the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services, including an obligation to pay the lawyer's fee as agreed, and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled." (Texas Disciplinary Rules of Professional Conduct 1.15(b)(5)).

9. WBTW has failed to pay Barnes & Thornburg's and ROFLLP's fees for six months and has been given reasonable notice that the firms intend to withdraw as a result of WBTW's past-due amounts owed to the firm.

10. Independently, a lawyer also may withdraw from a representation where "the representation will result in an unreasonable financial burden on the lawyer." (Texas Disciplinary Rules of Professional Conduct 1.15(b)(6)).

11. Here, continued representation of WBTW will result in an unreasonable financial burden on Barnes & Thornburg and ROFLLP as a result of WBTW's failure to pay amounts owed to both.

12. Further, a lawyer also may withdraw from a representation if "withdrawal can be accomplished without material adverse effect on the interests of the client." (Texas Disciplinary Rules of Professional Conduct 1.15(b)(1)).

13. Presently, no discovery has been issued on WBTW and no deadlines are imminent—there is only an upcoming status conference on March 3, 2021, to discuss the case. Thus, a withdrawal now will not have a material adverse effect on WBTW's interests.

14. Together, it is clear that good cause exists to permit Barnes & Thornburg and ROFLLP to withdraw from its representation of WBTW in this matter as a result of WBTW's failure to pay amounts long overdue to the firms, and that WBTW has received reasonable notice. *Matter of Wynn*, 889 F.2d 644, 646 (5th Cir. 1989) (explaining that counsel may withdraw after making a "showing of good cause and reasonable notice to the client"); *Rabin v. McClain*, No. SA-10-CV-981-XR, 2011 WL 3793939, at *2 (W.D. Tex. Aug. 25, 2011) (collecting cases and noting that it is "especially true" that good cause for withdrawal exists "when counsel has made repeated requests for payment, and informed the client of an intent to withdraw if payment is not received"); *Dorsey v. Portfolio Equities, Inc.*, 2008 WL 4414526 (N.D. Tex. Sept. 29, 2008) (concluding that law firm provided "adequate notice" in situation where law firm "repeatedly requested" payment, then sought to obtain client's consent to withdraw after "it was clear [the client] would not be able to pay the balance due," and only sought withdrawal "when all of these prior efforts proved fruitless").

WHEREFORE, Thomas G. Haskins Jr., David G. Oliveira and Victor Vincent Vicinaiz, for themselves and each of their respective firms, respectfully request that the Court grant each leave to withdraw their appearance on behalf of We Build the Wall, Inc., and all other just and proper relief.

Respectfully submitted,

/s/ Thomas G. Haskins, Jr.
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Counsel for Defendant WeBuildTheWall, Inc.

CERTIFICATE OF CONFERENCE

I hereby certify I conferred with counsel for all other parties, who indicated they are not opposed to the relief sought herein.

/s/ Thomas G. Haskins, Jr.
Thomas G. Haskins, Jr.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 26th day of February, 2021, a copy of the foregoing was filed electronically using the CM/ECF system and is available to all counsel of record using same. I also served WBTW's General Counsel, via email, certified mail and US Overnight Mail.

/s/ Thomas G. Haskins, Jr.
Thomas G. Haskins, Jr.